

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

-vs-

DAVID M. RHODES,

Defendant

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NO. 3:CV-04-373

(Judge Kosik)

MEMORANDUM AND ORDER

We have before us a defense motion to dismiss an indictment charging the defendant with threatening to assault a law enforcement officer in violation of 18 U.S.C. §115(a)(1)(B) and use of interstate communications to facilitate a threat in violation of 18 U.S.C. §875(c). In the alternative, the motion seeks to suppress statements the defendant allegedly made to Dr. Gary Londis when referred to him as part of the Employee Assistance Program (EAP) while defendant was a corrections officer at FCI Schuylkill.

Background

Defendant, while a corrections officer, was apparently having some employment problems due to work relationship or emotional difficulties which were characterized by his supervisors as “erratic.” Although suspended and reinstated, the problems continued.

The Warden referred the defendant to Dr. Londis after complaints and fears expressed by perceived victims. In the process, defendant may have made inculpatory statements which the defense seeks to suppress and on which they premise their motion to dismiss the charges pursuant to the Fifth Amendment due process clause to the U.S. Constitution.

The motion to suppress is now moot because the government states they do not intend to rely on any statements defendant may have made to Dr. Londis. The defense advises that it will not pursue the suppression motion.

With respect to the motion to dismiss, the government states that there is an independent basis for the charges and that there is no nexus between the charges and the actions of the Warden in referring the defendant to Dr. Londis or anything imparted to Dr. Londis. The charges stem from direct threats the defendant made from either at work or from his home. This does not appear to be disputed.

Accordingly, at this point, the motion to dismiss will be DENIED, and the case will be scheduled for a pre-trial conference.

SO ORDERED.

s/Edwin M. Kosik
United States District Judge

Date: October 4, 2005